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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,280	05/01/2006	Gerald Murray Smith	69817-5001	8853

24574 7590 08/12/2009

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EXAMINER	
NGUYEN, SON T	

ART UNIT	PAPER NUMBER
3643	

MAIL DATE	DELIVERY MODE
08/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/564,280	SMITH, GERALD MURRAY	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-9* is/are pending in the application.

4a) Of the above claim(s) *6-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: the word "faeces" is misspelled and should be changed to ---feces---. Appropriate correction is required.

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claim 1 is rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Biogrow Basket Lining (on form PTO-1449, herein Biogrow) in view of Heisey (3909407).** Note that Applicant failed to cite the date of the Biogrow Basket Lining article on form PTO-1449. However, the Examiner has provided the date from www.archive.org/index.php which shows that the article with the basket lining was date back from Dec. 17, 2003. This is the date that one can access the biogrow basket lining article. The actual company website date back from Jan 24,2001 according to the wayback machine.

Biogrow teaches a natural biodegradable felt (the basket) suitable for growing seeds, seedlings, or plants comprising a mass of predominantly unscoured animal wool (the virgin wool is unscoured because it has not been treated, hence, "virgin"). Although Biogrow does not specifically state that the natural biodegradable felt includes at least a portion of animal feces derived from the unscoured animal wool, it would be inherently taught in Biogrow that virgin wool would include feces because it has not been treated or it is in the raw form. In any event, if not inherently taught, Heisey teaches that raw wool include animal waste matter (col. 1,lines 21-22). Thus, it would have been an obvious substitution of functional equivalent to substitute the virgin wool of Biogrow with the raw wool with feces of Heisey, since a simple substitution of one known element for another would obtain predictable results. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

5. Claims 2,3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biogrow alone or as modified Heisey as applied to claim 1 above, and further in view of McCrory et al. (2004/0123520A1 on form PTO-1449).

For claim 2, Biogrow alone or as modified Heisey further teaches the natural biodegradable felt is suitable for growing seeds, seedlings or plants, or for transporting fruit, shellfish, fish, vegetables and plants. However, Biogrow alone or as modified Heisey is silent about the felt constructed at least in part from a felt of needlepunched unscoured animal wool.

McCrory et al. teach a natural biodegradable felt suitable for growing seeds, seedlings, or plants comprising a mass of predominantly unscoured animal wool

[0007][0013], hair [0012], or fur [0007][0013]. In addition, McCrory et al. teach the felt being suitable for growing seeds, seedlings or plants, or for the transporting fruit, shellfish, fish, vegetables and plants [0016][0031][0032], constructed at least in part from a felt of needlepunched [0012] [0013] unscoured animal wool [0007][0012][0013]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a needlepunched process as taught by McCrory et al. to bind the raw wool fibers of Biogrow alone or as modified Heisey in order to create a tight basket to hold plants/seeds therein.

For claim 3, in addition to the above, McCrory et al. further teach wherein seeds are lodged in the felt/substrate [0031][0032]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to lodge seeds as taught by McCrory et al. in the felt of Biogrow alone or as modified Heisey in order to provide a growing substrate for the seeds therein.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Biogrow alone or as modified Heisey (as above).

Biogrow alone or as modified Heisey is silent about the natural biodegradable felt having a density from 0.01 to 0.3 g/c.c., and a thickness from 2mm to 60mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the natural biodegradable felt of Biogrow alone or as modified Heisey with a density from 0.01 to 0.3 g/c.c., and a thickness from 2mm to 60mm, since it has been held that where routine testing and general experimental conditions (what plant/seed

types the felt is used for) are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

Response to Arguments

7. Applicant's arguments with respect to claims 1-3,5 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/
Primary Examiner, Art Unit 3643